

Minutes
KITTY HAWK TOWN COUNCIL
Monday, November 7, 2011
Kitty Hawk Town Hall, 6:00 PM

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Fiscal Year 2010-11 Audit Report by Dowdy & Osborne, LLP, CPA's
5. Public Comment
6. Consent Agenda
 - a.) Approval of October 3, 2011 Regular Meeting Minutes
 - b.) Revenues and Expenses Report for September 2011
 - c.) FY 11-12 Budget Amendment #4.
 - d.) FY 11-12 Budget Amendment #5.
7. Items Removed from the Consent Agenda
8. Public Hearing
 - a.) Conditional Use Permit: Application for a conditional use permit to establish a motor vehicle service and repair business in a Beach Commercial (BC-2) district in Units I & J of the existing Quail Run business center at 500 Sand Dune Drive. The proposed use would include the service and repair of vehicles for the applicant's business (Wild Horse Adventure Tours) and the general public.
9. Planning
 - a.) Call for Public Hearing. Text Amendment: Proposal to amend subsection 42-587(a), *Temporary sign/banner permits*, to lengthen the amount of time that a temporary sign or banner can be used to two 50-day periods per calendar year. A public hearing is requested to be scheduled for the December 5, 2011 Town Council meeting.
10. Unfinished Business
 - a.) Conditional Use Permit: Application for a conditional use permit to establish a shared parking arrangement between businesses in the Ocean Centre shopping center at 5230 N. Virginia Dare Trail. The Town's shared parking provision in Section 42-544(j) allows up to a 50% reduction in parking requirements for a business when its hours of operation do not overlap with other businesses on the same property.
11. New Business
 - a.) Ordinance to Prevent the Obstruction of Fire Hydrants and Fire Department Connections
 - b.) License Agreement Granting Use of Town Property for 10 x 10 Foot Shed
 - c.) Discussion of Shoreline Improvements at Windgrass Circle to Protect Oak Trees
 - d.) Determine Date/Time for Workshop on the Storm Drainage Study
12. Reports or General Comments from Town Manager
 - a.) Dare County Park in Kitty Hawk
 - b.) Letter of Appreciation for Fire Department
 - c.) Thank you Letter from RPC
 - d.) Town to Retain CRS Class 6 Rating
 - e.) FEMA Reimbursements due to Hurricane Irene

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13. Reports or General Comments from Town Attorney
14. Reports or General Comments from Town Council
15. Public Comment
16. Recess (to date determined under new business for the Storm Drainage Study)

COUNCIL MEMBERS PRESENT:

Mayor Clifton Perry, Mayor Pro Tem Gary Perry, Councilman Ervin Bateman, Councilwoman Emilie Klutz, and Councilman Richard Reid

STAFF MEMBERS PRESENT:

Town Manager John Stockton, Town Clerk Lynn Morris, Town Attorney Steve Michael, Planning Director Joe Heard, Police Chief David Ward, Fire Chief Lowell Spivey, Public Works Director Willie Midgett, (Finance Officer Mike Eubank absent)

1. CALL TO ORDER

Mayor Perry called the meeting to order at 6 PM and welcomed everyone to the meeting. He then asked everyone to join in a moment of silence and Pledge of Allegiance to the flag.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

Following a moment of silence the Pledge of Allegiance was recited.

3. APPROVAL OF AGENDA

Councilwoman Klutz made a motion to approve the agenda. MPT Perry provided a second and it passed unanimously, 5-0.

4. FISCAL YEAR 2010-11 AUDIT REPORT. *Teresa Osborne, Dowdy & Osborne, LLP, CPA's, will present this report.*

Teresa Osborne: *Good evening. I am here with you tonight to present the results of the town's June 30, 2011 Fiscal Year Audit. The town has received an unqualified opinion on its financial statements and no negative findings related to the audit. This is the best audit opinion that you can receive. The report is about 55 pages long and I am going to pick out a few highlights and go over those with you. I am always available if you have any questions. Give me a call at my office if the questions do not come to mind tonight.*

On pages 1 and 2 of the audit report is what is called the audit opinion. It is a report that states the unqualified opinion on your financial statements. Pages 3 to 9 is the management discussion and analysis which is a narrative summary of the different parts of the audit. Pages 10 to 12 have the full accrual financial statement which combines all of the funds of the town and includes the capital assets and data for the town.

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Pages 13 and 14 are what I would like to spend a little time on this evening. These are the financial statements that are most common to local governments and the one used most often in analyzing your financial position. New accounting standards implemented this year require the capital reserve fund to be combined with the general fund on these two statements so when you are looking at these two statements just remember that the capital reserve fund is blended in with the general fund. Although North Carolina General Statutes allow capital reserve funds they do not meet the technical definition of a special revenue fund based on the new accounting standards. On page 14, in the first column, the general fund had total revenues of \$5,489,333. Revenues exceeded expenses by \$28,347. Revenues less expenses with some transfers in from the capital project fund gave revenues over expenditures of \$28,347. It was very close to breaking even in the general fund.

Those total revenues of \$5,489,333 were approximately \$1,114,000 more than the prior year primarily due to two revenue sources. The current year property taxes showed an increase of \$40,000. That was due in part to an increase in the tax base of \$10,000,000 from the prior year which added about \$18,000 to the current year taxes. Plus the tax collection rate on property taxes increased from 98.48% to 99.34% which is an excellent tax collection rate. That provided another \$23,000 for a total of \$40,000 in current year taxes. Additionally, prior year tax revenues increased by \$18,000 over the prior year. Sales and Occupancy taxes were \$76,000 more due to greater county wide tax collections. Total expenditures in the general fund as I pointed out earlier were \$5,596,968. That compares to a little over 5.4 million dollars in the prior year.

I want to point out that even though the town spent more in the current year, \$246,900 of that is because you transferred money over from the capital reserve fund for the new 800 mega hertz radio system. The town has been saving for that for several years and that is why the expenditures actually bumped up in 2011. If you back that out expenditures for 2011 were actually less than the fiscal year 2010.

New accounting standards also change our commonly referred to terms for fund balance. We used to always talk about undesignated fund balance and now it is called unassigned fund balance. On page 13 at the bottom, under the fund balance section, you can see that fund balance is broken into 4 categories: non-spendable, restricted, assigned and unassigned. Unassigned fund balance in the general fund at the end of the year was \$4,262,546. It represents 77% of total general fund expenses for the fiscal year. The council adopted a fund balance policy this past June to have a minimum fund balance at year end of 3.5 million dollars. There is a detail note on page 34 that shows the 3.5 million dollars as a reduction from the total fund balance leaving \$762,546 available for appropriation at the end of the year. Are there any questions on either one of those statements?

Page 16 shows the general fund including the original adopted budget and the amended budget at the end of the year. There were very few amendments to the general fund during the year. Pages 17 and 18 show information on the law enforcement pension trust fund and the Firemen's

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Relief Fund. Pages 19 to 34 are detailed notes on the financial statements that give a breakdown on some of the numbers that are found in the financial statements. Pages 35 to 38 show actuarial data on the law enforcement officer's special separation allowance and I would like to point out that on page 38 it refers to the actuarial study for the health insurance retiree benefit. The town updated its actuarial study last year and due to changes in benefits offered to retirees the annual required contribution dropped \$100,000.

The remaining pages in the report show all the information you have already seen just in greater detail. All in all I would say the town ended the year in great financial shape. The town has managed and maintained its tax rate in spite of declining revenues by cutting and holding the line on expenses. That is about as much detail as I am going to go into unless anybody has a specific question that they would like for me to answer.

MPT Perry and Councilwoman Klutz commented they were pleased with the report.

Osborne: *I would like to thank the entire finance department. Mike does much of the work for the annual audit and he was a big help to me while I was here. I appreciate the opportunity to have worked with you again. Again, please feel free to call me if you have any questions.*

Mayor Perry: *Thank you.*

5. PUBLIC COMMENT. *The General Public is invited to address the Town Council on any topic. Please sign up with the Town Clerk before the meeting and when your name is called, come forward and speak into the microphone at the podium. Please limit comments to 3 minutes.*

1.) Sandy Reid, Kitty Hawk Landing. *Mrs. Reid said she had been asked by someone very close to and fond of the mayor to announce that today is his birthday.*

Everyone gave Mayor Perry a round of applause.

Mayor Perry thanked everyone and said he was glad she did not say how old he is.

6. CONSENT AGENDA. *Items on the Consent Agenda are considered to be non-controversial, routine in nature or items not requiring a presentation to or discussion by the Town Council in order to consider the item(s). Any item may be removed for discussion by council or by any member of the audience who wants to hear the item presented and discussed.*

a.) Approval of Minutes. *October 3, 2011 Regular Meeting. (An affirmative vote for the Consent Agenda will approve these minutes.)*

b.) Revenues and Expenses Report for September 2011. *(An affirmative vote for the Consent Agenda will acknowledge this report.)*

c.) FY 11-12 Budget Amendment #4. *This budget amendment will recognize, appropriate, and authorize the transfer of \$7,592.00 unspent line item computer monies from the*

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FY10-11 budget year's final audited figures. Upon approval of this amendment, these funds will be transferred to the Capital Reserves fund in accordance with policy (established May 2011) and restricted for future information technology improvements. *(An affirmative vote for the Consent Agenda will approve this budget amendment.)*

- d.) **FY 11-12 Budget Amendment #5.** This budget amendment will recognize and appropriate a \$1,410.00 grant award to the Town of Kitty Hawk from the Home Depot Foundation to replace some of the items destroyed by flooding of town public works facilities during Hurricane Irene. Approval of this grant award by Council will require no funding match from the Town. *(An affirmative vote for the Consent Agenda will approve this budget amendment.)*

MPT Perry made a motion to approve the Consent Agenda as promulgated. Councilman Bateman seconded and the motion passed unanimously, 5-0.

7. ITEMS REMOVED FROM THE CONSENT AGENDA

No items were removed from the consent agenda.

8. PUBLIC HEARING

- a.) **Conditional Use Permit:** Application for a conditional use permit to establish a motor vehicle service and repair business in a Beach Commercial (BC-2) district in Units I & J of the existing Quail Run business center at 500 Sand Dune Drive. The proposed use would include the service and repair of vehicles for the applicant's business (Wild Horse Adventure Tours) and the general public.

Councilwoman Klutz made a motion to go into public hearing. The motion was seconded by Councilman Bateman and passed unanimously, 5-0.

Attorney Michael asked anyone wanting to speak at this public hearing on the conditional use for the Beach Ready Auto Repair to come forward and be sworn in.

Clerk Morris administered the oath to Joe Heard, Richard Brown, Sandra Standley, Tom Watkins, and Mike Davenport.

Heard: *The applicant in this case is requesting approval of a conditional use permit in order to establish a motor vehicle service and repair business in units I and J of the Quail Run Business Center at 500 Sand Dune Drive. The proposed use would include the service and repair of vehicles for the applicant's business The Wild Horse Adventure Tours as well as service for the general public. The location of the auto repair shop (pointing to the site plan on the overhead projection) in units I and J comprises a total of about 2500 square feet in the center of the building. Interior layout of the units under this proposal would not be changed significantly.*

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The repairs would be constructed in the two service bays found in the northern half of the unit and the southern half would contain an office, storage, and support facilities for the staff associated with the business.

The subject property as a whole is 1.72 acres in size and presently zoned Beach Commercial-2. The subject property, as well as all of the properties in front of it along the highway, are also zoned Beach Commercial-2. The properties behind contain Sandpiper Cay, multi-family units and is zoned Beach Residential-2. There are other residential properties located on the northern side of Worthington Lane that are zoned Beach Residential-1 including a series of single family houses that extend away from this property along Sonny's Lane.

Because of some of the concerns we received I have some measure estimates to give everyone an idea the dimensions we will be talking about this evening. I sketched in the approximate location of the two units on the building, and doing an approximate measurement, it appears to be somewhere between 100 and 110 feet from the subject building to the corner of this structure in Sandpiper Cay. Moving over to the other end, at the closest structure, it is somewhere between 70 and 80 feet between the structures in that area.

The other thing you can see on the aerial photograph along the rear boundary is a pretty significant vegetative buffer. There is a 50 foot buffer for this building itself and the plantings that occurred when this was developed back in 1998 has grown to a width of approximately 20 feet and appears to be anywhere from 15 to 20 feet in height. It seems to be Russian Olive bushes and Pine trees. It is my understanding that those may have been planted by Sandpiper Cay but they also serve to augment the existing buffer on the property. The buffer narrows slightly on the northern end of the property. There is an area that is a little grayer looking and it is the retention pond for this property. Because of the presence of a pond the buffer narrows slightly to a width of somewhere around 15 feet in that area. The other important thing to note is that the ordinance requires a buffer along the rear property line but this buffer actually wraps around the building. Along the southern property line and the northern property line anywhere the building faces a residential area the buffer extends in those areas as well.

The subject property as a whole contains 14 units for multiple tenants and many of those have been combined to serve a single tenant over the years. The center as a whole contains 17,500 square feet. One of the key things staff looked at and evaluated for this proposal on an existing developed site is the parking requirement. Does this use generate a need for additional parking? The site presently has 77 parking spaces located on the eastern side, in front of the building, and extending over on the southern side as well. With 77 spaces that actually exceeds the minimum parking requirement for the site which would only be 50 spaces in this particular case. In calculating and using the formulas we have for auto repair businesses in the past and using those calculations for the proposed use it would only generate a need for 6 parking spaces. The applicant also estimates there might be as many as, typically 2, but occasionally as many as 5 parking spaces that would be taken up by vehicles that were waiting repair or waiting to be

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picked up at the end of the day. There would be vehicles there awaiting repair or that have been repaired.

As part of the ordinance that allows auto service and repair shops as a conditional use in the BC-2 district it lists criteria this use has to meet no matter what the circumstances. One is that there be no storage of wrecked, junked, or abandoned vehicles. The applicant was clear at the planning board meeting and with staff that this business is not an auto body repair shop so they will not have heavily damaged, wrecked, or junked vehicles on site at all. They fully intend to comply with that. The second condition is there are to be no fuel dispensing devices. This business will not have any fuel pumps or other dispensing devices as part of it. It appears they comply with the mandatory conditions.

At its meeting on September 15th the planning board reviewed this application and voted unanimously to recommend approval of the proposed conditional use to the town council to establish the auto repair and service business. I want to note, as the council considers this application tonight, this is one of the first conditional use applications that you have had since adopting the standards. Staff has listed out some findings based on the planning board discussion. If council is inclined to consider this use you can refer to those findings or you can certainly add any findings of your own that you come up with during your thought process. That is all I have for you this evening.

Michael: *Any questions for Joe? (There were none) Who else would like to speak? Please come forward and identify yourself.*

Richard Brown: *My name is Richard Brown owner of Beach Ready Auto and Wild Horse Adventure Tours. One of the reasons why I wanted to open this auto repair facility is I have been a frequent customer for the last 6 years. Owning a tour business with vehicles that go up and down the beach, 12 hours a day, 7 days a week during the peak season, they need a lot of repair. I have a lot of experience with the different repair facilities on the Outer Banks and I am not saying all of them are bad, but if there are a lot of vehicles outside, 10 to 15 waiting to be serviced, it is a slow turn around.*

I am all about customer service and this is going to be serving my own vehicles for the tour business which means hopefully I can get them done quickly and efficiently and also it will be serving the public as well. I will definitely make sure it will be very professional. We are going to have a nice waiting room which again not many businesses here on the Outer Banks seem to provide. There will be a family room for waiting and also a regular waiting room.

I provided a copy of the handout with pictures to you and that shows I did address some of the issues that Sandpiper Cay residents did have. The biggest one I think is noise and that will be addressed. Right now with the barrier there that Joe was talking about it should block most of the noise but also what I am going to do is box the air compressor. It generates the largest amount of noise. It is going to be relocated to the center of the building and a box will be built

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around it with some sound proofing to help it further. I am also going to put in A/C and heating so we can close doors during noisy repairs. Most of the repairs really do not generate any noise these days. I am going to be very, very tech savvy so you basically plug in the code reader and it tells you what is wrong with the vehicle. You switch the parts out and there is not any noise or any need to run the engines. Some of it though will be working on my own vehicles. There is a little bit of customization in which case we will close the doors, front and back. We have ventilation and we will have heat and air. There is internal sound proofing along the walls and on the ceiling which also should help out things. I think that is about it unless anyone has questions.

Michael: *Any questions?*

MPT Perry: *Sometimes people bring in a vehicle, or maybe it was drug in. and they decide the estimate is too expensive. Or maybe you repair it and they decide they cannot pay for it right now. What do you do then? How long are you going to keep it on the lot?*

Brown: *The system I have in place with very good software keeps track of everything and basically what we will do is generate an estimate and they have to sign that estimate. I will probably, if it is a larger repair, get a deposit because I know that is how a lot of auto repair shops fail. Because of exactly that reason. People will say I need my vehicle to get to work in order to make the money and then it gets a bit messy. In that instance I would just have it... if they refuse to pay I guess I would have someone like A-1 towing carry it to their storage facility and then they would be charged a daily fee at the facility there.*

MPT Perry: *The concern would be how many... you see these auto repair shops, like you say, with all these automobiles out there for a sundry of reasons and this place will not handle it. That is the concern I am trying to address.*

Brown: *I will not do that. To me, as a customer, when I pull up in that auto repair facility and there are 20 vehicles outside, I am not going to want to go to that facility. It is going to be two weeks before they even get around to my vehicle if they have 20 sitting outside. I want to definitely keep it to a point where there are no more than 5 outside. That way when someone pulls up they are like, "there are only a few vehicles ahead of me so it should not take too long to get my vehicle repaired." I definitely want to keep that number down because I think it just creates a very, very bad look for the business.*

Bateman: *I have a question. When I was at my gas station and auto repair place today, I noticed they had a gigantic tank over in the corner. It was about 4 foot by 4 foot by 4 foot deep and he came out and dumped oil from a cylinder after he had drained it from a car. Where are you going to have that tank on this property? How do you dispose of it?*

Brown: *We are going to use 55 gallon containers. Have a 55 gallon drum and then another one for the waste oil. Then as you use the one you fill the other one up. The service we are*

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going to use is going to come and collect the used oil. I am about recycling. The more I can recycle the better. I guess it is used for something else. I am not going to have any oil burning heaters which a lot of auto repair facilities have. That is why they store the oil because they use it in the winter to heat the premises but I am not going to be doing that.

Bateman: *And would that used oil be kept outside or inside?*

Brown: *Inside.*

Hearing no other questions at this time, Attorney Michael asked Mr. Brown to have a seat.

Michael: *Would anyone else like to speak at this time? Come up and identify yourself please.*

Sandra Standley: *I am Sandra Standley. My husband and I have lived at Sand Dollar Circle for four years now. We recently did a considerable amount of renovation using all local employees and services. We live directly behind the proposed garage and I have a few written comments.*

Sandpiper Cay is probably one of the largest, if not the largest, revenue producers for Kitty Hawk I would think. That is with taxes. Yet our little community within the community which also directly abuts this property, if I am correct, does not appear to be well served. By allowing a quote "full service preventative maintenance and repair service center for all" unquote for all types of vehicles and quote "off road upgrades" unquote to enjoin such a long portion of our community, Sandpiper Cay, seems a bit to me un-neighborly from our larger community of Kitty Hawk. I doubt anyone in a residential area would care to awaken to the sounds of repair noises any day of the week, let alone every day of the week which is a possibility because that is what is in the proposal. Starting at 8 AM or earlier and through 5 PM or later because it is stated the initial, the initial operating hours, is open to whatever. There are no parameters put on that. This is not a concern from any of the current business tenants in Quail Run because they are not producing noise. They are not open 7 days a week and even if they were it would not factor into anything. The noise barrier that was set up apparently years ago would deal with whatever minor, occasional, noises there could be. Additionally the eventual sale of abutting properties which are all of the ones in... facing the business center certainly would be compromised in the future negatively.

This also sets a definite precedent because in the initial approval the commercial site going back to 1997, '98 says for offices or retail commercial uses. That is obviously why we are having this meeting today. However, like I say there is... this is setting a precedent so who is to say in a couple more years, next year, or whenever, that whole commercial strip could become garage oriented, noise oriented.

On page 3 of the proposal letter "c" "will not substantially injure the value of adjoining property or be a public nuisance, and" "...would be an improvement for the other businesses..."

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Well that is debatable if the other businesses would find a lot of cars parked outside to be repaired. That is not for me to say, but what about the residential? Everything is the business side, the business side, what about us? What about the residents who are paying taxes yearly and certainly generating more revenue than a new business that is going to... I heard after... I first saw the sign two weeks ago and we walked outside and I was hearing pneumatic tools. I was told that it was a repair of one of their privately owned vehicles but that is... I did not come down here from Pennsylvania; move my home down here, to waken at 7 or 8 o'clock in the morning every day of the week... I leave windows open, I hear the ocean roar. That is taking away from our quality of life. Plus it would be 7 days a week.

The next one is "d" "will be in harmony with the area in which it is located..." Not for the residential people. And bushes do not prevent a whole lot of noise in the summer. Whatever businesses are still there I hear people talking and that is fine. That is normal sound. Noise that is normal living. But to be subjected to any kind of garage type of noises 7 days a week that is just... Then further along it says "as the abutting property facing the proposed use is also zoned and/or used for commercial purposes, the auto repair business is in harmony with the other properties most impacted by its use." I would contend that most properties impacted by its use are all the residents and not the tenants who are neighbors. We are the largest adjoining property to this. We the people are the ones who are most impacted here.

In closing I would just like to say that I do not think, if you search your soul, if you had a property where you were living, that you would be very happy to have this type of new business. You are speaking and questioning about the visual impacts of having a car or a couple of heaps stored. This does not impact us at all. The visual is not impacting us, it is the auditory. Thank you for your time and I hope you can understand our, I think, very legitimate concerns in this.

Michael: *Does council have any questions for her? Was there someone else that wanted to speak? Come up and identify yourself please.*

Tom Watkins, 1907 Neptune Way: *I am Tom Watkins and a resident of Sandpiper Cay since 1996. I live at the top of the hill that overlooks the building that is causing us the concern now at Sandpiper Cay. I also am on the board of directors and one of the things I would like to ask you is to delay a decision until the board can meet. Our next scheduled meeting is this coming Friday so it would not be a significant delay.*

There is a lot of concern in our community about this building. A lot of it is... I am trying not to come across as being cynical, but it goes back to the original construction of that building. There were a lot of people in Sandpiper Cay at the time who were upset about it. We went through that whole process where it ended up... it was going to be built but the assurance was it would be a one story building. There might be some options for some elevated storage space inside the building but everything would be one story. That is not a one story building now. There are offices in some of those on the second level so we do not feel that good faith was done by us in terms of the original building without getting into this newest tenant.

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There was mention made of the buffer and the parking and again we are talking aesthetics. That buffer is one where the reference was made that there were some pine trees that had been placed in there by Sandpiper Cay. There are also Russian olives. If you look back to the documents from 1997 or '98 when this was happening, a part of the requirement was for the buffer to be maintained by whomever it is that owns that building. Those bushes have never been trimmed one single time and when you are talking about the depth of those bushes some of that depth is an encroachment. As neighbors we have not complained about that. One time it was trimmed. We were unable to get any kind of compliance to have that done and we did it at our own expense.

So first of all I want to qualify, just from some of the historical background, why there is a cynical feeling. Particularly when you go and look at the request and it says in there "initial conditional use" and then it goes on to say it is going to be 8 o'clock to 5 o'clock daily. Well how much worse could it get if that is just the initial? Obviously I am very upset about this thing.

We are talking about the aesthetics. No one mentioned is there any affect or could there be from emissions? There is a window in that unit.

It appears to me to have been too much of a rush to put this thing through without looking at some of the consequences of that. It concerns me... I do not know what the process is. I will have to plead ignorance on that for a request coming in for a variance for a business until it gets to the point where it is with you folks here this evening looking for a vote. But it concerns me that as a resident and other residents that I have spoken with, none of us knew this was happening until there was a piece of paper on a pole about that size posted about a week and a half ago. That was not enough time for us as a community to get together to discuss and voice our concerns so that it would be something that you would look at.

And again look at the history in terms of why we feel the way we feel about it. This is not a threat in terms of any positions you have. I really just want people to understand this but the last time this happened people in the community were so upset that they did feel that it was the responsibility of the body that was in here. That was not you folks and then the next election they were gone. I am not doing that as a threat I am just saying there is a significant segment of the year 'round population of Kitty Hawk that lives in Sandpiper Cay and we would like to feel that people are taking our quality of life into account before they make a decision on something like this.

It seems a little presumptive but there is a sign in the window about this business that says basically that it is opening tomorrow. I hope that is not because someone had told them that they had already had approval for it. But that is the word out there too. It is a matter of procedure, protocol, and just begging you to take into account how we feel. It would adversely affect us in Sandpiper Cay. I am speaking as an owner, I am speaking as a board member, I am

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not speaking for the entire board but I would like for the entire board to have an opportunity to look at that before a decision is made. Thank you.

Michael: *Any questions? Is there someone else that wanted to speak?*

Mike Davenport: *I am Mike Davenport. I am part owner of Quail Run Business Center, manage the complex, and I would take issue with many of the things that he just said as being totally untrue. I am not interested in getting in a conflict with Sandpiper Cay but just to defend against what he just said how irrelevant it actually... I mean what he is referring to in the past is, in my opinion, irrelevant to the public hearing that we are having here today.*

I do want to address what he said because we submitted a plan for second story offices and to say that it was not on the plans is ridiculous because it was approved that way to start with. And I will also add that I met with the manager of Sandpiper Cay and gave him a copy of the plans before we even built the building or applied for a building permit. So if you want to talk with Doug Sea or Seay or whatever... (shouting from the audience). However Doug Seay was the manager of Sandpiper Cay and I did not know he was a villain or whatever but... (shouting from the audience). I do not know what you are referring to but... (shouting from the audience).

Michael: *Ladies and gentlemen if you want to speak you will have an opportunity to come up and speak. Let this gentleman finish.*

Davenport: *And I will say I am not a proponent of Doug Seay or whatever that issue is. I am just saying I took it upon myself to go there and show him what we were planning to do. He had no objections and no one showed up at the meetings such as this before we built the building. Anyway, just want to put that to rest.*

And the bushes have been trimmed. He does not know what he is talking about.

However, getting back to this particular issue, Mr. Brown in my experience, is looking to do a business that is going to be good for the community. To say that it certainly will be a noise problem is totally unfounded. I mean the building faces east, Sandpiper Cay is way behind the building, and there are bushes there, a whole wall. There are no windows in his unit that open to the outside and I think that to try and shoot down this idea just based on... and I understand the concerns but to say that they were... it will certainly be a problem is just totally unfounded. As Mr. Brown pointed out they bring the cars in, they do a diagnostic, and they make the repairs. It is not a shooting range or some... I cannot imagine in my mind that you would be able to hear anything inside of Sandpiper Cay. That, just to me, that blows my mind. I understand the concern but I do not believe that that is what is going to happen.

As an owner of this property, it is zoned commercial and it is being used as a commercial use within the zoning and regulations of the town. That is what the zoning was set up for. If you bought property next to a commercial zone you took it upon yourself to live there. This is a

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commercial property. There is not a lot of commercial property in Kitty Hawk. We do need these types of services and I think he is going to be a good operator of a business and I think it should be approved. With the economy the way it is he is going to be hiring and providing jobs. We do not want the building to be sitting there empty. We have been trying to lease this space for a long time and that is basically all I have to say. Thank you for your time.

Watkins: *I am not looking to get into an argument but would you please just look back to what you have from 1997 and '98 when that was going on. That was absolutely intended and explains _____ one story building. (Mr. Watkins did not speak at the lectern.)*

Davenport: *Even if it was one story it does not mean _____. (Mr. Davenport did not speak at the lectern.)*

Michael: *Does anyone else want to speak?*

Standley: *I would just like to reiterate that the day after I saw the sign, the little sign, and I walked outside I heard pneumatic tools going. I mean I was not dreaming it. I walked outside and I thought, what is this?*

Davenport: *How did you know it was...*

Standley: *Because it was... I live right behind it.*

Michael: *Do not engage with each other. Talk to the council.*

Standley: *Yes, okay. He asked me the question so... anyway I knew because I live right behind it and also I would hope that you take into account the precedent... this was initially Sandpiper Cay... I am new... four years... Sandpiper Cay was established and first built about ten years prior to this commercial center being approved. So the community was here. I certainly was not but the community was here way before the commercial building and this is why we are having a discussion now because it is making an exemption to what was initially approved... was going to be the use for this commercial property. Thank you.*

Michael: *Anyone else?*

Brown: *I can definitely empathize with these guys and if I lived at the back of there I would definitely be concerned. I mean when you think of auto repair shops you do imagine pneumatic drills and loud air compressors things like that. And the lady said she could hear pneumatic drills but it was probably the air compressor which is pictured here. She probably well did hear that and I apologize for that. That is going to be rectified. I am going to move that air compressor to the inside of the building and create a sound barrier. Also to be within code I am going to have to put a 3 hour fire wall up and that is 3 layers of sheetrock. It is going to cost a chunk of change but that is what you have to do to be within code. So again, I am sure you guys*

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could definitely hear some noises right now but once I get the 3 layers of sheetrock in and put a barrier around the air compressor that will make a huge difference in noise level. I do want to... like I say you guys live behind where I work and I do not want to upset you. I also... if you look at the pictures here I have not installed it yet because again I did not want to... I bought the A/C unit and the heating unit but I did not want to install it yet. But I bought the unit and you can see they are mounted and I even built the pedestal to put the compressor on outside. I just have not hooked them up yet. So again once it is hooked up then during any loud repairs like customization, things like that, the doors will remain shut. If it is obviously a diagnostic with a computer we can open the doors... there is not going to be any sound. But anything loud where we are using pneumatic tools which is to say pretty rare but on that occasion we will make sure both doors, front and back, are closed. I made sure I went behind the buildings because I know a couple of other people did and with the doors closed even right now you cannot hear any sounds with the doors closed. And certainly with these improvements which hopefully will address these issues you will not be able to hear any sounds.

Klutz: *The question I have is about the operating hours. In this material it says it will be necessary at times to operate from 7 AM until 5 PM during the peak of the tourist season. So it is only during the tourist season?*

Brown: *That is correct.*

Klutz: *You expect those hours, 7 AM to 5 PM during the tourist season... it will not be during the off season would it...*

Brown: *No, that is more than a long enough day for somebody to work. The only reason I want to do that during the peak season is and the reason that it would maybe be 7 days a week... actually I probably... if it came to where I closed one of the days during the week maybe or something like that but basically with my tour business it is a seasonal business so I do only have about a 4 or 5 month window to really try and make my money. The thing that really frustrated me about the local auto repair shops is I take my vehicle in and they would be a couple of weeks before I got it back and that really, really hurt me during the peak season to have a vehicle down. I am losing money every day it is down. So that is what really prompted me to start this business up. I tried using backyard mechanics to get it done over the weekends and that did not really work. I did try other avenues but this one to me seemed the best way to do it. And that is why we would do the longer hours during the peak season. So the weekend, when it is change over weekend, you know tourists are coming and going we are probably about 50% booked instead of 100% booked which we are during the week. It is an opportunity to take my vehicles and service them even if it is just oil changes, transmission flushes, things like that. It gives me an opportunity over the weekend to get that done when I really need it done and that is why I worked it like the way it is.*

Klutz: *The other question I have is, we are dealing with a conditional use permit and are you currently operating in the facility?*

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Brown: *To a degree. Not to the public no. And the sign on the outside of the door, yes it does have tomorrows date on it but it does have in parenthesis "if all goes well with the town meeting" or something like that. I did put on there a little clause hoping that that would be it.*

Klutz: *With the sound proofing you are considering to mitigate the noise problem the residents are concerned about, is there any way to determine with a meter to measure and see if the noise is actually operating beyond the facility so...*

Brown: *I went out and did random checks and things like that. I would say just closing the door by itself would solve 95% of the noise problems. The rest of it will, like I say, it will be completely quiet. It is only fair anyway because I know I would not like that.*

Klutz: *Those are my questions, thank you.*

Michael: *Any other questions?*

MPT Perry: *There are no doors in the rear?*

Brown: *There is a door, there are no windows. There is a big metal door in the rear.*

Davenport: *It is just a 3 foot door.*

Brown: *And there is no access to the back either. I know that was one of the concerns that there may be cars parked around the back. There is no access to the back side.*

MPT Perry: *Other than people.*

Brown: *Other than... well... and yes, you can walk around it.*

Klutz: *The use on that door... mainly the door will be closed?*

Brown: *Yes.*

Klutz: *Is it a code requirement to have another door in the back of the facility for fire safety?*

Davenport: _____ (Mr. Davenport did not speak at the lectern.)

Michael: *Any other questions?*

MPT Perry: *Will you be doing mufflers, tail pipes, and things of that nature?*

Brown: *Not something I am definitely going to specialize in. Everyone around here just...*

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MPT Perry: *But there is no guarantee that you would not do that?*

Brown: *No. I could not guarantee that.*

MPT Perry: *I do not have any other questions.*

Michael: *Okay, thank you. Anyone else want to speak? That seems to be all of the comments to the council. You are at a point that you can begin your discussions on this conditional use application.*

Reid: *Should we close the public hearing?*

Michael: *I would suggest you not close the public hearing yet because during your discussions some questions may come up you may want to ask somebody about.*

Klutz: *My preference right now would be to think about this a little more and put it off until the next meeting.*

MPT Perry: *I am not ready to make a decision on this at all.*

Mayor Perry: *Generally, if we have a public hearing and we have any concerns then we do not take any action that night.*

MPT Perry: *I have a question for the attorney and that is the speakers seem to want time to get to their board. If we close the hearing tonight how does that affect what impact they might have for us?*

Michael: *What I suggest to you is that you not close the hearing, that you continue this to your next meeting date. You can receive additional information because you have not closed the hearing. Then you can close it and do your deliberations separate.*

Klutz: *That is what I would like to see done.*

Mayor Perry: *The BC-2 district has allowed for conditional use automotive repair shops for many, many years. I do not know how long but the question is, does that leave you an option to deny a request or can you just put restrictions on that request. And this is an attorney question, if you do not want a repair shop in a BC-2 district then the way to do that is before a request comes in. Request it to be taken out of that district. That becomes a larger question.*

Michael: *That would be a zoning issue. What you have now is an application and your decision is whether or not it meets the standards of your ordinance. The reason it is a conditional use is because there are some other standards that are set out in the ordinance for this particular use and your decision is whether or not it meets those standards and whether or not it meets the*

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other general standards that is in the ordinance for conditional uses. If you find that it does, then yes you should grant the conditional use. You can impose reasonable other conditions that are related to the use but they have to be directly related to that use and it has to somehow tie into the zoning that you have. But since you are talking about continuing it to consider other information at that point in time there is no way you can make a decision of saying yes you should or should not.

Mayor Perry: *I asked that question so the public and the council can understand where we are. So we will move on.*

MPT Perry: *We are going to be thinking about this, all that we have heard and possibly more that we are going to be hearing. The two items that legally could make this go either way is under the conditional use findings that have been recently put in: "will not substantially injure" and "will be in harmony." Those sound subjective to the local governing body's opinion is that a correct statement?*

Michael: *With the subjective in the sense that you have to decide whether or not there is evidence in the record that supports the findings. You are going to make for either... sustain that or not sustain it. You have to do it based on the evidence. It is not just whether or not you decide it is not there. There has to be evidence to persuade you one way or the other as to what finding you will make with regards to those standards.*

MPT Perry: *So we have before us some folks worried about noise and some folks stating that the noise will not occur. Where do we find the fact before the fact? We want to do this right. We do not want to hurt anybody on either side.*

Michael: *You really do not have any objective evidence before you one way or the other on that issue. You have some objective evidence about the building; the sound proofing that is going in there. You have things like that. You do not have any other evidence that directly relates to that. Somebody brought up something about using a decibel meter out there to see... we do not have that.*

Mayor Perry: *But if we did, it would be after the fact in order to prove that it was beyond the decibel allowed.*

Michael: *That is right. You can only act on the evidence that is presented in the public hearing. If somebody presents something in regards to that then yes you can consider that.*

Mayor Perry: *If we could put a noise decibel that would be allowed to be heard beyond the boundary lines and then in the future it was a noise problem and we checked it with a decibel meter then that would be evidence that we could revisit the issue. Is that correct? If they were exceeding what is allowed beyond the property line?*

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Michael: *Well you do not have an ordinance that has decibel levels in it...*

Mayor Perry: *Beyond the property line.*

Michael: *I understand but it is sort of subjective as to whether or not it is going to offend somebody beyond the property limits. You do not have decibel limits saying that the boundary... the decibel limit cannot exceed this. So you do not have an objective standard that you can measure with. But if somebody said you can hear a blaring horn for 10 minutes that certainly would be something that your noise ordinance could address but somebody tooting the horn twice because they are doing an inspection on an automobile...*

Klutz: *I have a technical question. We received some additional information tonight, written information from the applicant regarding the building and the sound proofing, etcetera. Since this has been presented to us, is this part of the record?*

Michael: *This is part of the record. I followed along with him as he was discussing it with you and he pretty much said everything that was in it.*

Klutz: *That is one of the reasons I am interested in a delay. A lot of it is new information and it appears to be mitigating some of the concerns that have been raised. I think it is prudent for us to take a little more time to look at this and also digest what we have heard from the adjoining property owners.*

Michael: *I take it what you want to do is make a motion to continue this public hearing until the next meeting date.*

Klutz: *That sounds exactly like what I want to do (make a motion to continue this public hearing until December 5, 2011).*

Mayor Perry: *Is that what you just did?*

Michael: *I am not sure what that date is.*

MPT Perry: *I will second it.*

Mayor Perry: *Any more discussion on it? All those in favor?*

The motion to continue the public hearing until December 5, 2011 was unanimously approved, 5-0.

9. PLANNING

a.) **Call for Public Hearing. Text Amendment:** Proposal to amend subsection 42-587(a), *Temporary sign/banner permits*, to lengthen the amount of time that a temporary sign or banner can be used to two 50-day periods per calendar year. A public hearing is requested to be scheduled for the December 5, 2011 Town Council meeting.

Councilwoman Klutz moved to call for a public hearing to amend subsection 42-587(a) temporary sign/banner permits to lengthen the amount of time that a temporary sign or banner can be used to two 50-day periods. The public hearing is requested to be scheduled for the December 5, 2011 town council meeting. MPT Perry seconded the motion and it passed unanimously, 5-0.

10. UNFINISHED BUSINESS

a.) **Conditional Use Permit:** Application for a conditional use permit to establish a shared parking arrangement between businesses in the Ocean Centre shopping center at 5230 N. Virginia Dare Trail. The Town's shared parking provision in Section 42-544(j) allows up to a 50% reduction in parking requirements for a business when its hours of operation do not overlap with other businesses on the same property.

Attorney Michael noted council has heard this before but did not act on it because the agreement was not signed. It is signed now and suggests adding in the motion the agreement has to have Exhibit "A" showing the shared parking calculations attached to it. It meets the requirements of the ordinance and with that exhibit attached it would be something that would fit under the definitions that is in the ordinance for shared parking.

Councilman Reid moved to grant approval of the conditional use permit application to establish a shared parking arrangement between the businesses in Ocean Center Shopping Center at 5230 North Virginia Dare Trail subject to the conditions outlined in the town code and Exhibit "A" the calculations for the parking. The town council concurs with the conditional use findings in the staff report and finds that approval of this conditional use permit is consistent with the Town's adopted CAMA Land Use Plan and states that granted approval is in the public interest. Councilwoman Klutz seconded the motion.

Councilman Reid said he is willing to support this because it is in accordance with the code and much work was done to establish shared parking. He has worked in a number of very dense, urban environments where shared parking was very viable and workable. However he cautioned people, particularly the merchants involved with shared parking, if it does not work and there is not enough parking for the uses, it is not the town that is going to be affected. It is not the town that is going to be hurt, it is going to be the merchant. When he drives into a shopping center or a parking lot for a restaurant and cannot find a parking space he does not go there and business is

lost. He has always cautioned people over the years who only wanted to build the minimum that it can end up hurting business.

Vote was unanimous, 5-0.

11. NEW BUSINESS

a.) Ordinance to Prevent the Obstruction of Fire Hydrants and Fire Department Connections

Councilman Reid made a motion that section 18-18 Obstruction of Fire Hydrants be added to Chapter 18, Miscellaneous Provisions and Offenses in the Kitty Hawk Town Code. MPT Perry seconded and then asked the manager to explain why it is needed.

Manager Stockton said as a result of the fire on Worthington Lane in August, he and Chief Spivey talked about the problem of access to the hydrant that was nearest to the fire and what measures could be taken to control the obstruction of fire hydrants. Also discussed was the authority of the town to require residents to keep the hydrants on public or private property cleared of obstructions. The county manager and town attorney were also consulted about what to do in order to try and make sure there is access at all times. The reason for recommending this is to not let obstructions around a hydrant delay the time for hooking up the equipment. It could mean the difference between saving and losing a structure. It is required in the fire code and believes it should be in the town code.

Having discussed this with the fire chief earlier today Councilman Reid said it is in the fire code but the average citizen probably does not know where to find it there. By putting it in the town code they have a better chance of finding it and believes it is in the public safety interest for the citizens of Kitty Hawk to pass this ordinance.

Councilman Bateman said he has no problems with the ordinance and asked the chief if having this ordinance would have made the hydrant that night more available or is it just another piece of paper.

Answering he honestly could not answer whether it would have made a difference that night, Chief Spivey said the hydrant had been covered with some mulch and did not know if this ordinance would have corrected the situation that night. Since 1994 he estimated about six times there has actually been a problem with people putting things around hydrants. That does not account for the telephone or cable companies that sometimes put a pedestal near one but when called, they correct it. That is in the fire code. Out of about six residents in town maybe two kind of wanted to argue about whether the hydrant was on private property or in the right-of-way. Those problems have been resolved. At least it can be presented as a town ordinance in addition to the fire code.

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MPT Perry said he learned in talking with the chief there are at least two or three hydrants that are on private property and this gives the town some way of making sure they remain free. It does not mean the resident or the property owner has to clean them. Do not misconstrue that. It means the fire department is responsible but they have the right to do it and that is the big difference.

Chief Spivey said they have to keep it accessible 3' around the hydrant so firefighters can get to it and hook the hoses up. It also covers the height of the steamer connection which is used to hook the large diameter hoses.

Councilwoman Klutz asked if the hydrant is in the public right-of-way is it the town's job to keep it free and clear or the adjacent property owner.

Chief Spivey answered the town takes care of it. Hydrant inspections are performed twice a year and depending on the vegetation and things around it, it is either cut down with a weed eater, an ax, or sprayed with weed killer. Sometimes public works has assisted.

Councilwoman Klutz asked about the hydrants on private property.

Chief Spivey replied there are actually twenty-one that are on private property and include ones at The Home Depot and Wal-Mart. There are a couple on private properties as well.

Councilman Reid said there are situations in town where there is no public right-of-way along the road and the hydrant may technically be sitting in someone's front yard. The town has to have access to it.

Councilwoman Klutz said Johnston Lane and Councilman Reid added Kitty Hawk Road.

Mayor Perry said not all of Kitty Hawk Road is public.

Councilman Bateman said he has seen them in the low lying areas cutting the reeds back. It is not something he would like to do especially when the snakes are out. They are out there doing what they are supposed to do and they are doing a good job.

The motion to adopt this ordinance passed unanimously, 5-0. (Ord. No. 11-12)

b.) License Agreement Granting Use of Town Property for 10 x 10 Foot Shed

Councilwoman Klutz questioned Item #12 of the agreement: "It is agreed and understood that this agreement shall not be recorded as a public record and the real property records of Dare County, North Carolina."

Attorney Michael said the second "and" should be "in."

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Councilwoman Klutz agreed and then asked why it is not recorded.

Attorney Michael answered license agreements are not recorded because they only run between, in this circumstance, the town and the owner of the property. It does not extend to a new owner. If a new owner bought the property the license agreement would expire.

Councilwoman Klutz asked then why in #1 it reads "Licensor hereby grants Licensee, its agents, servants and successors, the right..."

Attorney Michael said this is rental property and it was his understanding the building was actually constructed by the person who is leasing the property and it would cover him even though the license actually runs to the owner.

Councilwoman Klutz said her problem with this is if the property goes up for sale the buyer will not know about the shed if there is nothing recorded about the town's right-of-way. She thought it should be recorded in some fashion for disclosure.

Attorney Michael said if somebody buys the property they are going to have to have a survey of the property and the survey is going to disclose this right-of-way for the town on it. It is going to show on the survey that this building, if it is still there, is within the town's right-of-way. They are going to be on notice because of the survey itself but you can provide for the recording of the license agreement if that is what council chooses. It is a four page document and is not going to be terribly expensive. It is just typically they are not recorded.

Councilwoman Klutz allowed it would make her more comfortable. Then there would be something a prospective buyer and an attorney who is doing the title search would have available to them. She asked how much it would cost to record it.

Attorney Michael answered he was not sure but thought maybe around \$50

PD Heard offered that a plat costs \$21 a page but that is a larger document. He thought what Mr. Michael said is probably correct and would be glad to check into it for council.

Councilwoman Klutz made a motion to approve the license agreement between the Town of Kitty Hawk and JQ Investments with the revision of Item #12 to replace the word "and" with "in" and to remove the word "not" after "shall." Councilman Reid seconded the motion.

MPT Perry said this whole thing has bothered him because the right-of-way runs through the lot. How did that happen or how that can be legal?

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Attorney Michael said it was his understanding the property was subdivided and the dedication of that street was made based on that subdivision. Later they came back and redid the subdivision and when they did that the right-of-way stayed there but these lots got created...

MPT Perry asked if the man actually owns a lot that has a right-of-way running through it. Attorney Michael replied he does.

MPT Perry said he has land on both sides of there but not enough to build on one. That is amazing.

Councilwoman Klutz asked if the town could actually pave a road through the man's yard and MPT Perry replied yes, literally.

Councilman Bateman said at one time it was thought to put a bike path through there and joining the two neighborhoods.

Mayor Perry added there was some discussion about Kitty Hawk Estates having access to a stop light. If it ever became that it could be a road it would allow access to The Woods Road.

Mayor Perry called for the vote and it was **unanimous in favor of the motion, 5-0.**

c.) Discussion of Shoreline Improvements at Windgrass Circle to Protect Oak Trees

Manager Stockton said there is some concern about the erosion around the oak trees at the Windgrass Circle Park. Staff was asked if it was possible to put in a bulkhead to protect the tree and put sand in to cover the exposed roots. The question is how to preserve the trees. To build a bulkhead would be rather expensive, about \$100 a foot, and would probably cost \$10,000. An alternative would be to put riprap along the shoreline. The bulkhead is not something that CAMA would like for us to do and it would be easier to get a permit to put in the riprap.

Mayor Perry said either one, the riprap or bulkhead, makes it harder for people to access the sound. He had not had time to get out there and look at the situation and could not make a good determination.

MPT Perry said he went there after hearing about it at the Recreation Committee meeting and went out there again today to have a second look. A couple of things came to mind and had discussed one with PW Director Midgett. There is one tree that is really in danger and is not sure what is holding it up. They are exposed and have been exposed to a lot of salt water and are in the water. There are only two of them that are in the kind of danger that would require what the manager just talked about and only one of those that is kind of immediate. That is the one that he does not know what is holding it up.

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It looks like there are a couple of things that need to be looked into and thought about. One of those is to get the county extension agent for an opinion whether or not the tree is salvageable. It may be dying already. Many trees will be lost due to Hurricane Irene just like with Hurricane Floyd and that oak may be one of those that are already in that distressed state. It may not be worth salvaging. On the other hand if the extension agent says it is probably okay then we are faced with two things. Let it wash out and fall down naturally, which it will do eventually, or do something with it. He would personally like to get a professional opinion on the state of the tree before any money is spent.

Mayor Perry asked if the multiuse path along the shoreline was damaged during the hurricane.

PWD Midgett said the riprap that was placed there did its job and it did not undermine it anywhere. The only thing that was damaged was some fencing and a couple of benches. An Eagle Scout is going to build them for the town. It held up well and the Windgrass Circle deck is also completed now.

It was a council consensus to get a professional opinion on the trees.

d.) Determine Date/Time for Workshop on the Storm Drainage Study

After a brief discussion council decided to meet on Tuesday, November 15, 2011 at 9 AM.

12. REPORTS OR GENERAL COMMENTS FROM TOWN MANAGER

a.) Dare County Park in Kitty Hawk – Manager Stockton said staff recently met with Tim White, Dare County Public Services Director, and discussed the situation with group events being held at the new Kitty Hawk Park. Mr. White agreed to notify the town of any applications for group activities at the park with 50 or more people. They will need to come by and fill out a town application for those group events. The county is in agreement with working with the town on that.

b.) Letter of Appreciation for Fire Department – Manager Stockton noted the town received a letter from Scott and Preston Wilkinson expressing their appreciation for the efforts made by the Kitty Hawk Fire Department and other departments assisting in fighting the fire on Worthington Lane on September 3rd. Mr. Wilkinson said that even though his house was a total loss he appreciated the professionalism, concern, and genuine compassion shown by our fire department.

c.) Thank you Letter from RPC – Manager Stockton said the town received a thank you note from Robbie Parker owner of RPC about the help he received from the town while they were making repairs and paving on Hatteras Island. Because of the additional hours they were allowed to operate it allowed them to complete the work on Hatteras ahead of schedule.

d.) **Town to Retain CRS Class 6 Rating** – Manager Stockton said the town has also received notification from FEMA concerning results of the Community Rating System. FEMA informed the town it will retain the CRS Class 6 Rating. This rating will provide a 20% discount in the premium cost for flood insurance policies. He complimented Donna Heffernan and the planning department for the work on the CRS.

e.) **FEMA Reimbursements due to Hurricane Irene** – Manager Stockton reported on the status of FEMA reimbursements and with the flood insurance provider for various damages as a result of Hurricane Irene. Police department building, \$56,550, police department contents \$52,946. Public works building, \$9,500, public works building contents \$17,057. Coastal Reserve \$61,610. The total for all those buildings is \$197,663. There is an itemized quote from a contractor and staff is in the process of submitting that to the insurance company. Any amounts not covered by the insurance company will be submitted to FEMA to see if they will cover it. Staff has filed with the town's property and liability provider for damage to vehicles, radios, and the traffic message board and that totaled \$17,632. Staff also filed with FEMA for this damage and could possibly receive the amount from FEMA for what the insurance company does not cover. The damage to the Windgrass Circle deck in the amount of \$8,975 was submitted to the insurance carrier and denied and then submitted to FEMA. Other items that had damage included the fences at the Recycling Center and Byrd Street and a microwave for the Recycling Center amounting to \$2,731 and that has been submitted to FEMA. There was also some street damage that was submitted to FEMA in the amount of \$13,788. We have also submitted to FEMA overtime, cost of equipment, and supplies. We have received an invoice from Crowder Gulf for the debris removal in the amount of \$171,254 but have not submitted the invoice to FEMA for reimbursement as of yet. The town has also received an invoice for the monitoring of the debris collection which amounted to \$44,000. As of now there is an estimated amount of claims and reimbursements totaling \$456,043.

Councilman Bateman asked if FEMA is going to pay for the Windgrass Circle deck.

Manager Stockton replied the town can apply to FEMA for that. Anything the insurance company does not cover can be submitted to FEMA but there has not been any response from them yet.

Councilman Bateman asked if individual property owners who lost their decks can apply to FEMA and get their deck replaced.

Manager Stockton said he thought they could.

Councilman Bateman suggested advertising that for the residents because he knows of at least 5 piers that were washed away and one owner said his insurance company is not going to take care of it and FEMA is not going to take care of it. One of the problems with this storm is nobody knows what they will and will not pay for. Nobody knows what to do.

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Manager Stockton said staff has been getting news releases from FEMA and has been putting it in the newsletter so hopefully people are getting the information. They also can visit the recovery center in Manteo and talk to FEMA directly about any damages they received

Councilwoman Klutz asked if FEMA is going to reimburse the town and Manager Stockton replied we do not really know. A FEMA specialist has been coming in and reviewing town submittals and then sending everything to the people who make the decisions.

Mayor Perry offered it may take as long as a year.

13. REPORTS OR GENERAL COMMENTS FROM TOWN ATTORNEY

Attorney Michael said he did not have anything further for council tonight.

14. REPORTS OR GENERAL COMMENTS FROM TOWN COUNCIL

Election - Councilman Reid wished "good luck" to Emilie and Ervin in the election being held tomorrow.

Outer Banks Marathon – Councilman Bateman thanked all the town employees and residents in advance for their help with the marathon this coming weekend. Everyone is excited and they are expecting between eight and ten thousand participants. They have worked all year long and encouraged those not running to go out and support the runners. Hopefully it will make a lot of money which goes to two really good causes: the Outer Banks Relief Foundation and the Dare Education Foundation.

Beach Accesses - Councilwoman Klutz pointed out that some of the beach accesses, since the last couple of storms, are almost in dangerous condition. One has a large piece of concrete sticking out with a jagged post underneath it. If anybody decided they wanted to use that concrete platform as a way to jump down they may have a surprise when they hit the bottom.

Beach Access at East Kitty Hawk Road - Mayor Perry asked if there was any new information about obtaining access to the beach from the sidewalk.

Manager Stockton replied there is not and because of the hurricane it was put off for a while.

Mayor Perry said he would like to discuss it at next month's council meeting. He does not like condemnation but believes there is nothing really left to condemn. When you get to the right-of-way it is just down the hill and that is it. There is nothing there. He believes it is in the public interest and should be looked into. The attorney mentioned something about publishing it in the newspaper where the person was last known to live.

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Attorney Michael said there are ways to serve people when you cannot find them. Diligent efforts have to be used to try and find them and all of the efforts made up to this point can be used as part of that. You can proceed that way and it may be the only option left to the town at this point.

Mayor Perry said the manager expressed the options to the owner. If he would communicate with us we would try and work something out but he just will not communicate.

Councilwoman Klutz said she would like part of the discussion to be the use of the public right-of-way which is fairly substantial. It could be used without any condemnation. Both the public and private options should be discussed.

Councilman Bateman said during one of his conversations with the owner he told him the town only wanted 20 feet. If only 20 feet is condemned it is not like taking the whole lot. It might be an easier thing to do than to go down 50 feet. That is going to be very costly and will be, according to DOT, very tough to do.

Mayor Perry said council could look at all of the options next time but really thought the best and safest way is to go straight across. He does not like the government taking anything but in the public interest it can be a greater thing. It should be on the agenda and in the mean time try to contact the owner again. Of course that is only one of the owners.

Attorney Michael said the gentleman was not interested in selling his property but was agreeable to giving the town an easement across it but without the other owner it cannot be done.

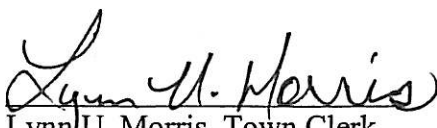
15. PUBLIC COMMENT

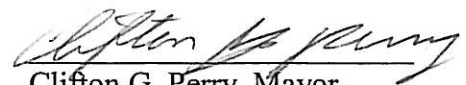
There was no public comment.

16. RECESS

Councilman Bateman made a motion to recess until 9 AM, November 15, 2011 at Kitty Hawk Town Hall. MPT Perry seconded the motion and it passed unanimously, 5-0. Time was 7:48 p.m.

These minutes were approved at the *December 5, 2011* council meeting.


Lynn U. Morris, Town Clerk


Clifton G. Perry, Mayor